

ABSURDITIES OF THE LAW AS ILLUSTRATED IN THE TAYLOR CASE.*

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THE absurdity of our laws and judicial procedures that relate to insanity and expert testimony is a theme so trite, and the hope of amendment of these laws seems so slight, that an apology is demanded for re-exciting their discussion. Yet it is possible that the granite-like conservatism which entombs the legislative and judicial mind may, by continual dropping, be so worn through as to let in the light, and the world at last discover that the brain within is not as stupid as it has seemed.

Therefore do I venture to call attention to certain episodes in the late trial of the convict Taylor for murder, before Judge Ludlow, of our criminal court.

As it is affirmed that, in the course of a long service on the bench, Judge Ludlow has never had a decision reversed, he must be looked upon as a strikingly correct exponent of the law, and any lack of consistency and common-sense found in his decisions must be attributed to the law itself and not to the conduit through which the legal stream flows to the consumer.

Further, I wish to be distinctly understood that no reflec-

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tion is cast upon the penitentiary physician, who did not put himself forward, but was, as it were, thrust into the witness-box by the prison authorities and the officers of the Commonwealth. When Dr. Robinson was asked as to the mental condition of the prisoner he was at once challenged by the defence, and it was proved beyond cavil that he was legally disqualified by reason of lack of experience from signing a simple certificate of insanity, but after discussion it was ruled that he could give an opinion upon the witness-stand. The law of Pennsylvania must therefore be understood as saying: You have not had enough experience to sign a certificate of insanity that shall confine temporarily a maniac in a comfortable insane asylum, but you have had enough experience and do know enough to give an opinion that may put a man in the grave from which there is no return.

The importance to the prisoner of this admission of Dr. Robinson's testimony is apparent, when it is known that it was the only shred of evidence approaching that of an expert which was given in favor of the sanity of the prisoner; the medical gentleman who was employed to aid in the cross-examination of the defendant's experts being convinced in the court that the prisoner was insane, and declining to testify to the contrary.

The peculiarity of the whole procedure is further apparent when it is also borne in mind that the three medical experts who pronounced the prisoner insane were, in fact, employed and paid by the Commonwealth, although in theory they were in the service of the prisoner. The Commonwealth may be said to have selected three gentlemen of recognized position as alienists, and when these men became convinced of the insanity of the prisoner, to have overthrown their judgment by appeals to the prejudices and ignorance of the jury, aided by the testimony of a very excellent but inexperienced young physician. The pecuniary interests of the

three experts drew them toward a verdict of sanity, and it is absurd even to suppose that sympathy moved them in favor of the wild beast whose life with its seventeen ferocious assaults had been almost a saturnalia of an only half-frustrated bloodshed. The experts were bound by their oaths, and as the tiger-like beast before them appeared to be an insane man, could only say that he was insane.

The decisions and acts of Judge Ludlow's court in regard to medical experts illustrate a practice which has had much to do with the present low condition of expert testimony in this country. So far as medical questions are concerned the fault and the consequent disgrace lie not with the proper qualified experts but with the practice adopted by judges of admitting any one to the stand who will put himself forward, however ignorant he may be. The law has taken away from the medical profession all control over its own membership and its own government. It has handed it, helplessly bound, over to the medical colleges; institutions without responsibility, from whose secret examinations all light of publicity is shut out; institutions which directly derive large revenues by letting loose upon the profession uneducated men. In the eyes of the courts these men are all experts, to the play of whose ignorant fancy human property, liberty, and life are left almost unprotected. There are cases of mental disease lying in the borderland between sanity and insanity, concerning which there must always be a difference of opinion. But omitting such cases, I have never personally known any serious divergence of opinions in medical jurisprudence which did not grow out of the ignorance or incompetence of one of the two sets of experts. In the first trial I was ever in—the Schoeppe case—the experts of the prosecution were grossly ignorant of the medico-legal matters. One of the best of them swore that Miss Steinicke must have died from a compound

poison, because he had given to a hawk a little of every medicine that he had in his drug store and the bird had died with symptoms like those of Miss Steinicke. From this incompetency arose two expensive trials and a final probable miscarriage of justice. In the notorious Wharton trials, the weeds of testimony, the wranglings of experts, the final impossibility of proving either guilt or innocence, were caused by the incompetence of the chemist employed by the Commonwealth. A qualified legal analyst would have settled the matter at once.

In the Wood trial, cited by the District-Attorney at my recent cross-examination, the family of the injured man very naturally desired punishment for the aggressor, and consequently paid for competent experts, who were nominally employed by the Commonwealth, the trial being a criminal one. When the rebuttal was attempted it was found that these experts had been convinced by us that the prisoner was really insane, and refused to testify otherwise. The case was then abandoned.

In the great Dwight life-insurance case, the plaintiff's experts came, it was stated, prepared to testify that Colonel Dwight died of malaria or other natural diseases; yet, as to all essential points, they were silenced before going on the stand, and there was no important contradiction of experts in matters of opinion. This result was the more remarkable, as with one or two exceptions the plaintiff's experts were not entitled to act as such.

In this way I could enumerate trial after trial, but time is wanting.

The science of medical jurisprudence is strong in its certainties, and the contradictions of witnesses almost always arise from the incompetency of one or the other side.

Very rarely does the student in this country study medical jurisprudence at all; and only when called upon in after-

life, suddenly, it may be, does he open a work upon that science. When it is further borne in mind that a considerable proportion of the American medical profession has never had any proper education, even in the practice of medicine, it is plain that so long as the courts cling to the fallacy that a doctor is a doctor, so long will reign confusion and contradiction between those who know and those who don't know. It is inevitable that as long as the law fills the medical profession, as it now does, and recognizes all upon an equality in the court-rooms, there will be doctors in abundance whose venality opens them to purchase, or whose ignorant credulity makes them liable to imposition.

The present system works ill both ways—in convicting the crazy man and in liberating the sane murderer. In the case of Emma Bickel, over which the newspapers are now making merry, or are growing furiously sarcastic, at the assumed expense of experts, but one physician testified as to the prisoner's insanity—and he not an alienist at all, but a general medical practitioner! I happened to know that one qualified alienist was approached by the defence and refused to testify, because he could see no evidences of insanity.

Trials involving the question of insanity are fast becoming such a farce in this country, that he who sees them as they are, hardly knows whether to laugh or to cry; but it is the judicial and legislative professions, not the qualified experts, which are chiefly at fault.

Experts are almost as much a necessity in a court of justice as the judge himself, yet our customs are stripping their testimony of almost all its value. To laugh at them, to worry out and get ahead of them in the battle of wits—which is dignified by courts as a cross-examination—is much of the business of the modern attorney.

Some time since I was asked for an opinion in regard to

a certain man's insanity. After examination I said to his lawyers: "You cannot find a qualified honest man in the world who will testify to your client's insanity; but if you will call no one, abuse those who tell the truth about him, and ridicule expert testimony in general, you will win your case." The plan was adopted; the judge delivered an opinion applauded by the newspapers as full of wisdom, but known by educated alienists to be lacking just where strength was most necessary, and the client was pronounced sane. Fortunately, after a few weeks' or months' liberty, he had more wisdom left in the wreck of his intellect than the Court had in the plentitude of its self-satisfaction, and, for the protection of himself and friends from his insanity, voluntarily returned to an insane asylum, where I believe he now is.

The most forcible illustration furnished by the Taylor case of the lack of consistency and common-sense in the law is, however, contained in the following questions and replies, which are given as they stand upon the court record:

Q. (by the Court).—An eminent physician has said that the law is defective, because it leaves out of account the moral features of one's nature, and therefore does not recognize the sentiments of passion and emotion. Is not the existence of anger, revenge, and jealousy the product of a diseased brain?

A. (by Dr. Wood).—It may or may not be. I believe a portion of the brain is set apart for the intellectual sphere, and another part for the emotions.

Q.—Suppose a case to arise in which the diseased condition of the brain produces jealousy, anger, or revenge; is that man insane?

A.—Yes.

By the Court:—That is the sort of insanity the Supreme Court declares shall make a man responsible.

I ask that special attention be given to the wording of the questions. The controversy is not the old one as to whether there is such a thing as moral insanity distinct from intellectual insanity. The judge puts it squarely and fairly that the passion is caused by disease of the brain, and by such disease alone. As the victim has no control over his disease, it is plain that he has none over the passion ; but, although the absurdity of such law is self-luminous, the subject is one of such vital importance that I propose to discuss it in some detail.

The nervous system of man has for its powers or functions : will, which controls all actions ; intellectual powers, which guide the will ; emotions, which also influence the will, and are capable of calling into activity the powers of the body independently of the will ; and motor discharge, which causes muscular movements. Perhaps this will be more easily understood when function is connected with structure. The nervous system, for our present purpose, may be considered to be composed of four superimposed zones, corresponding to the four functions spoken of above, and arranged in the order of their subordination. First, at the top, is the zone of the will, which in the normal man dominates all below it. Second, is the intellectual zone, which furnishes the intellectual actions. Third, is the emotional zone, which can act upon the lowest zone, but is itself controlled by the will. Fourth, is the lowest or spinal zone, which causes muscular movements when called upon by superior zones. Such is the human organism to which the law is supposed to be correlated.

The basis of all proper laws must be either abstract justice, or necessity for the protection of society ; as equivalent terms to abstract justice may be used the expression "moral equity," whilst "public policy" may be employed as a brief equivalent to the necessity for the protection of society.

The demented criminal is justly held by the law as irresponsible, because his intellectual faculties cannot distinguish right from wrong, and therefore his will cannot select between the two courses of action. This is a recognition by the law of the moral equity of the case, but in order to protect society the man is locked up, although moral equity does not demand his incarceration. It can make no difference in the moral equities what is the immediate method or cause of the loss of the alleged criminal's free will. If the will itself be paralyzed by disease, the individual, so far as his moral rights are concerned, is in the same position as though the will had power but could not act properly on account of the perversion of the intellect. Again, if there be disease in the lower or spinal nerve zone then the individual is freed from legal as well as moral responsibility, so far as concerns the muscles immediately affected by such disease. Thus, if in any situation duty require a man to put forth his hand, if the arm be paralyzed by disease in the special zone or region, the man is freed from responsibility, because he has no free will in the matter, the possibility of his action being estopped. Again, if the disease of the spine cause an uncontrollable spasm of a man's arm, and disaster results from such movement, the man is still free from responsibility.

It is the office of the will to control the passions by preventing a discharge of nerve-force from the zone or region whose function they are. The same morbid process which, when attacking the spinal cord causes a discharge of nerve-force and a consequent spasm of the muscles, may so attack the portions of the nervous system controlling the passions, that the will has no more power over the discharge of nerve-force from these emotion-centres than it had over the discharge of the spinal nerve-force that caused movement of the arm in our supposititious case. The free will is paralyzed

in either case, because disease has so affected a lower nerve-centre that said nerve-centre will not mind the behests of the will. A man's free will being in any way destroyed, the equity must be that the individual is relieved from responsibility. If we look at the subject anatomically the absurdity of the law becomes even more apparent. The four zones of nerve-centres may be with sufficient correctness considered as placed one above the other ; at the bottom is the spinal system, above the emotional, above this the intellectual, and higher than all the will-zone. Now the law appears to be that, if a tumor, inflammation, or other lesion affects the spinal zone so that the will cannot control its discharges of nerve-force, the individual is not responsible for results which grow out of such loss of control ; if the intellectual zone be damaged, the same rule of law applies ; if the will-zone be affected, again is the individual freed from responsibility ; but if the tumor or inflammation locates itself in the emotional zone, then must the man be hung for acts which are entirely beyond his control and are the product of physical disease. A fraction of an inch one side or the other in the situation of a disease of the nervous system makes the difference whether the sufferer is to be taken care of for life or is to be hung.

Suppose two brothers, John and James, inherit a tendency to a nervous organic affection which we may call X. Then if John has his X a half inch higher up in the brain than has James, he is comfortably housed and fed, whilst his brother perishes on the gallows.

The complete *reductio ad absurdum* is, however, to be found in the single case : Suppose a man has a shifting, nervous irritation. If to-day such irritation paralyzes the intellectual centres, the man is irresponsible ; but to-morrow, when the irritation shifts to the emotional centres, the man is responsible, although in either case equally helpless against his diseased self.

I have no mawkish sympathy with criminals. I believe that every man who is convicted three times of a felony should be confined for life and made to support himself by labor. I recognize that society has the right to take human life, when such taking is absolutely essential for the protection of society, whether abstract justice warrants the sacrifice or not. I do not complain simply because the law unjustly takes the life of the insane man. Death to the hopelessly insane is often a boon, a rest, and is never a distinct evil. The deep damnation of the statute is in that it publicly brands the unfortunate victim, in his helplessness, with the mark of Cain, and, if he have a family, shadows the lives of those he leaves behind with perpetual infamy. If the protection of society demands that the insane murderer be put to death, let such death be as painless and as far free as possible from the horror of expectation, and let it be distinctly stated by the judge: "This man, though guiltless, because irresponsible, is to be put to death for the protection of society." Beyond all is it important that the law be consistent with itself, so that the growing feeling of distrust of, and contempt for, our courts may not ripen into quiet lawlessness, and fraud be habitually met by fraud through the hopelessness of an appeal to the courts.